

MAY 02 2007

Serial No. 10/725,954
60246-296**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Appellant: Sands
Serial No.: 10/725,954
Filed: December 2, 2003
Group Art Unit: 3654
Examiner: Kumar, Rakesh
Title: AUTOMATED FREEZER COMPONENT

Mail Stop Appeal Brief- Patents
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

APPEAL BRIEF

Dear Sir:

Subsequent to the filing of the Notice of Appeal on March 2, 2007, Appellant hereby submits its brief. The Commissioner is authorized to charge Deposit Account No. 03-0835 in the name of Carrier Corporation \$500.00 for the appeal brief fee. Any additional fees or credits may be charged or applied to Deposit Account No. 03-0835 in the name of Carrier Corporation.

REAL PARTY IN INTEREST

The real party in interest is McDonald's Corporation, the assignee of the entire right and interest in this Application.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

STATUS OF CLAIMS

Claims 1-20 are pending in this application. Claims 1-20 stand finally rejected under 103(a).

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Serial No. 10/725,954
60246-296

STATUS OF AMENDMENTS

The Advisory Action mailed January 23, 2007 indicated that amendment filed December 26, 2006 was not entered. The amendment filed December 26, 2006 amended paragraph 25 to refer to the automated grill as reference numeral 21. Figure 1 was amended to show the automated grill schematically as reference numeral 21.

SUMMARY OF CLAIMED SUBJECT MATTER

As shown in Figure 1, this invention relates to an automated freezer 20 including a removable cartridge 30 for storing at least one item 22 (page 3, lines 18 to 20) and a platform 46 moveable within the removable cartridge 30 in response to a request for the at least one item 22 (page 3, lines 27 to 29 and page 4, lines 10 and 11). This basic structure is set forth in Claim 1.

Independent claim 18 recites a method for removing at least one item 22 from an automated freezer 20 (page 3, lines 18 to 20). The method includes the steps of loading the at least one item 22 into a cartridge 30 (page 5, lines 8-9), loading the cartridge 30 in the automated freezer 20 (page 6, lines 8-10), sending a request to the automated freezer 20, and automatically removing the at least one item 22 from the automated freezer 20 in response to the request (page 3, lines 27 to 29, page 4, lines 10 and 11 and page 4, lines 23-28).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

- A. Are the drawings properly objected to under 37 CFR 1.83(a)?
- B. Are Claims 1, 4-9 and 18-20 properly rejected under 35 U.S.C. 103(a) based on Kaufman et al. (U.S. Patent No. 5,335,816) in view of Chianek (U.S. Patent No. 5,813,569)?
- C. Are Claims 2, 3, 10 and 13-17 properly rejected under 35 U.S.C. 103(a) based on Kaufman et al. in view of Chianek and further in view of Tansley (U.S. Patent No. 2,315,827)?
- D. Are claims 11 and 12 properly rejected under 35 U.S.C. 103(a) based on Kaufman et al.

Serial No. 10/725,954
60246-296

in view of Chianek and Tansley and further in view of Nigro (U.S. Patent No. 3,998,238)?

ARGUMENTS

A. Objection to the drawings under 37 CFR 1.83(a).

The Examiner objected to the drawings under 37 CFR 1.83(a) as not showing every feature of the invention specified in the claims. Figure 1 was amended to show a grill 21. Paragraph 25 was amended to add "21" after the word "grill." The Examiner stated in the Advisory Action that the amendment was not entered for purposes of appeal. Appellant believes this amendment should be entered as it presents no new issues for consideration and reduces the issues for appeal.

B. Obviousness of Claims 1, 4-9 and 18-20 based on Kaufman et al. and Chianek.

Claims 1, 4, 5, 7-8 and 18

The Examiner finally rejected Claims 1, 4-9 and 18-20 as being obvious over Kaufman et al. in view of Chianek. The present invention is patentable and strikingly different from Kaufman et al. and Chianek. As described by the claims, the present invention provides an automated freezer including a removable cartridge for storing at least one item and a platform moveable within the removable cartridge in response to a request for the at least one item. [See Claim 1]. Claims 1-20 of the present invention all share these same or similar features. [See Claims 1-20].

The Examiner states that it is common practice to seal and store packages in cold storage areas to extend the shelf life of the products to be dispensed, and it would be obvious to include a refrigeration mechanism in Kaufman et al. to maintain the temperature of the contents regardless of the outside environmental conditions to extend shelf life of the product. Appellant respectfully disagrees.

Kaufman et al. discloses an interactive medication delivery system 100 for medication. The system 100 oversees and coordinates the administration of complex medication regimens to the elderly at home without day to day supervision of medical personnel. The medication is prepackaged

Serial No. 10/725,954
60246-296

in sealed blister packages 102 prepared by a pharmacy or drug distributor that contain dosages of all the medications prescribed to be taken at a given time (column 5, lines 8 to 18). The system 100 ejects the packages 102 for the patient.

The claimed invention is not obvious. First, there is no reason to employ a refrigeration mechanism in the system 100 of Kaufman et al. Kaufman et al. discloses using the sealed packages 102 to lengthen the "shelf life" of the medication (column 5, lines 13 to 16). Kaufman et al. already addresses the issue of extending the shelf life of medication. Further, adding a refrigeration mechanism to the system 100 to extend shelf life would add unnecessary additional expense, as the sealed packages 102 already provide this function. Therefore, there is no reason or motivation to employ a refrigeration mechanism to cool the medication in Kaufman et al. as the sealed packages already extend the shelf life of the medications.

Additionally, the claimed invention is not obvious because a refrigeration mechanism would provide no benefit in Kaufman et al. In Kaufman et al., medication is given to a patient in a controlled amount. Although refrigeration can extend the shelf life of products over time, the medication in Kaufman et al. is not given to patients in a quantity that is high enough to require refrigeration. All the medication is contained in one package 102, and therefore the blister packages 102 include pills, not liquid. Medication is generally prescribed to patients in a small amount, such as 30 to 90 pills at a time for a month's worth of pills. This small quantity of medication would only be stored by the patient for a short amount of time before use. A refrigeration system would have no effect on an item that would only be stored for a short period of time, and therefore there is no reason to extend the shelf life of the medication using a refrigeration mechanism. Additionally, medication already has a long shelf life, usually years. There is no reason or motivation to cool pills that already have a long shelf life. In fact, medication is typically stored at room temperature, and storing medication at a different temperature could have a harmful effect on the medication. The claimed invention is not obvious.

Additionally, there is no motivation to employ a refrigeration mechanism in Kaufman et al. because of Cihanek. Cihanek is non-analogous art and not reasonably pertinent to Appellant's

Serial No. 10/725,954
60246-296

problem. "In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." In re Oetiker, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). Cihanek reference is not analogous art to Kaufman et al. and is not relevant to the problems solved by Appellant's invention.

Cihanek is non-analogous art. Kaufman et al. is directed to a medication delivery system. Appellant's invention is directed toward an automated freezer component. Cihanek is directed to a point of sale merchandiser. These fields are very different from each other. Further, each of these fields has specific and unique design criteria and component characteristics, which are not compatible with each other.

Additionally, Cihanek is not reasonably pertinent to the Appellant's particular problem. A reference is reasonably pertinent if, even though it may be in a different field of endeavor, it logically would have commended itself to an inventor's attention in considering his problem because of the matter with which it deals. In re Clay, 966 F. 2d 656, 659, 23 USPQ2d 1058, 1061 (Fed. Cir. 1992). As discussed above, Cihanek is clearly not within the field of freezers including a cartridge to hold an item in response to a request, which is the subject to which Appellant's invention is directed. Further, Cihanek does not logically commend itself to the attention of an inventor seeking to solve problems present in freezers including a cartridge to hold an item in response to a request. This is because Cihanek deals with the problem of point of sale merchandisers that merchandise products near a cashier counter.

Finally, Cihanek relates to a point of sale merchandiser for merchandising products near a cashier counter. One skilled in the art would not consider the point of sale merchandisers when seeking to modify the medication delivery system of Cihanek. There is no reason or motivation to employ these features in the device of Kaufman et al. The claimed invention is not obvious, and Appellant respectfully requests that the rejection be withdrawn.

Serial No. 10/725,954
60246-296

Claim 6

The rejection of Claim 6 is separately contested from the rejection of claims 1, 4, 5, 7-8 and 18. Claim 6 recites that the automated freezer includes a sensor, and a removal device removes an item from the automated freezer through an exit opening in response to a request when the sensor detects the item. Neither reference discloses a sensor that detects an item. The Examiner states that Kaufman et al. teaches a sensor and refers to Figure 12. The Examiner further states that the sensor detects input from the user. However, the claims do not recite that the sensor detects input from a user. The claims recite that the sensor detects "said at least one item," and the at least one item is removed from the automated grill in response to the request when the sensor detects the item. Kaufman et al. does not disclose a sensor, but instead discloses a user generated signal. Cihanek also does not disclose this feature. Therefore, the references taken together do not disclose, suggest or teach the claimed invention. The claimed invention is not obvious, and Appellant respectfully requests that the rejection be withdrawn.

Claim 9

The rejection of Claim 9 is separately contested from the rejection of claims 1, 4, 5, 7-8 and 18. Claim 9 recites that the cartridge has a substantially circular inner profile. The Examiner states that it would be obvious to modify the teachings of Kaufman et al. in view of Cihanek to include a cartridge having circular inner profile. Neither Kaufman et al. nor Cihanek discloses a cartridge having a substantially circular inner profile. There is no suggestion to make an inner profile of the compartment 104 of Kaufman et al. circular as claimed. The inner profile of the compartment 104 of Kaufman et al. is clearly shown as rectangular. If the inner profile of the compartment 104 was circular, the rectangular blister packs 102 would not fit properly in the compartment 104. Cihanek also discloses a rectangular compartment. Therefore, the references taken together do not disclose, suggest or teach a circular inner profile. The claimed invention is not obvious, and Appellant respectfully requests that the rejection be withdrawn.

Serial No. 10/725,954
60246-296

Claim 19

The rejection of Claim 19 is separately contested from the rejection of claims 1, 4, 5, 7-8 and 18. Claim 19 recites that the at least one item is transferred from the automated freezer to a grill. The Examiner states that it would be obvious to remove the article from the dispenser of Kaufman et al. and transfer the article to a grill, and the claimed invention is obvious. There is no reason to employ a grill in Kaufman et al. Kaufman et al. relates to a medication delivery system for medication in prepackaged blister packages that contain medication. Medication is not grilled. There is no reason to transfer medication to a grill as claimed, and therefore no motivation to make the suggested combination. The claimed invention is not obvious, and Appellant respectfully requests that the rejection be withdrawn.

Claim 20

The rejection of Claim 20 is separately contested from the rejection of claims 1, 4, 5, 7-8 and 18. Claim 20 recites a sensor that detects when a cartridge that contains at least one item is empty and a visual indicator that indicates when the sensor detects the cartridge is empty. The Examiner states that the request comprises a signal sent by a POS device. However, neither Kaufman et al. nor Cihanek discloses a sensor that indicates when a cartridge is empty. Therefore, the references taken together do not disclose, suggest or teach the claimed invention. The claimed invention is not obvious, and Appellant respectfully requests that the rejection be withdrawn.

C. Obviousness of Claims 2, 3, 10 and 13-17 based on Kaufman et al. and Chianek and further in view of Tansley.

Claims 2, 3 and 13-17

Claims 2, 3 and 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaufman et al. in view of Cihanek and Tansley. The claims recite a retention mechanism that retains a portion of an item in an automated freezer when a cartridge that stores the at least one item is removed from the automated freezer. The Examiner states that Tansley discloses a cup dispenser including a retention mechanism 31 that retains a cup when a cartridge 10 is removed from the

Serial No. 10/725,954
60246-296

dispenser. However, Tansley does not disclose that the cartridge 10 of the cup dispenser is removable. Therefore, even when considered with Kaufman et al. and Cihaneck, none of the references disclose, suggest or teach a retention mechanism that retains a portion of an item when a cartridge that stores at least one item is removed.

Additionally, there is no reason to employ a retention mechanism to retain the blister packs 10 in the dispensing device of Kaufman et al. when the compartment 104 is removed. As shown in Figure 7, the blister packs 102 are contained in a compartment 104 enclosed at the bottom by a bottom wall 122. If the compartment 104 was removed as shown in Figure 11, the entire compartment 104, including the encased blister packs 102, would be removed. There would be no blister packs 102 remaining in the dispensing device to be retained. Therefore, there is no motivation to employ a retention mechanism in the dispensing device of Kaufman et al. The claimed invention is not obvious. Appellant respectfully requests that the rejection be withdrawn.

Claim 10

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kaufman et al. in view of Cihaneck and Tansley. The claim recites a cartridge having a first portion and a second portion that are removably attached. The Examiner states that it would be obvious to modify the teachings of Kaufman et al. in view of Cihaneck and Tansley such that the cartridge is composed of two equal halves. Appellant respectfully disagrees. There is no teaching in any of the references of a cartridge made of two halves. The cartridge 10 of Tansley is not disclosed as being made in two halves; in fact, it is shown as being a single portion. There is no reason to make the container 104 of Kaufman et al. in two halves, as it is also shown as being one piece. There is no teaching in any of the references to form a cartridge of two portions. Therefore, the references taken together render the claimed invention obvious. The claimed invention is not obvious, and Appellant respectfully requests that the rejection be withdrawn.

Serial No. 10/725,954
60246-296

D. Obviousness of Claims 11 and 12 based on Kaufman et al. and Chianek and Tansley and further in view of Nigro.

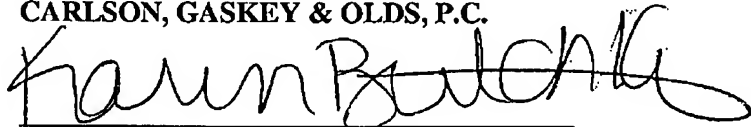
Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaufman in view of Cihanek, Tansley and Nigro. Claims 11 and 12 depend on patentable independent claim 1 and are allowable for the reasons set forth above. The claimed invention is not obvious because it is not obvious to employ a refrigeration mechanism in Kaufman et al. for the reasons set forth above in Section B. Appellant respectfully requests that the rejection be withdrawn.

CONCLUSION

For the reasons set forth above, the rejection of all claims is improper and should be reversed. Appellant respectfully requests such an action.

Respectfully Submitted,

CARLSON, GASKEY & OLDS, P.C.

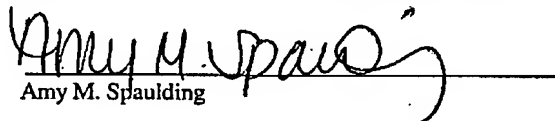


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Dated: May 2, 2007

CERTIFICATE OF FACSIMILE

I hereby certify that this appeal brief is being facsimile transmitted to the United States Patent and Trademark Office, 571-273-8300 on May 2, 2007.



Amy M. Spaulding

Serial No. 10/725,954
60246-296

CLAIM APPENDIX

1. An automated freezer comprising:
a removable cartridge for storing at least one item; and
a platform moveable within said removable cartridge in response to a request for said at least one item.
2. The automated freezer as recited in claim 1 further including a retention mechanism to retain a portion of said at least one item in the automated freezer when said cartridge is removed from the automated freezer.
3. The automated freezer as recited in claim 2 further including a buffer defining an inner passage, said buffer having a lower end and said retention mechanism, wherein said cartridge further includes an upper end, and said upper end of said cartridge is received in said lower end of said buffer.
4. The automated freezer as recited in claim 1 further including a removal device and an exit opening, wherein said removal device removes said at least one item from the automated freezer through said exit opening in response to said request.
5. The automated freezer as recited in claim 4 wherein said platform raises after said at least one item exits said automated freezer through said exit opening.
6. The automated freezer as recited in claim 4 further including a sensor, wherein said removal device removes said at least one item from said automated freezer through said exit opening in response to said request when said sensor detects said at least one item.
7. The automated freezer as recited in claim 4 wherein said removal device is pivotal.

Serial No. 10/725,954
60246-296

8. The automated freezer as recited in claim 1 further including a controller associated with the automated freezer and a POS device, wherein said request comprises a signal sent by said POS device.
9. The automated freezer as recited in claim 1 wherein said cartridge has a substantially circular inner profile.
10. The automated freezer as recited in claim 1 wherein said cartridge includes a first portion and a second portion, and said first portion is removably attached to said second portion by an attachment feature, and said first portion includes a first bottom end having a first half-circular cutout and said second portion includes a second bottom end having a second half-circular cutout, said first half-circular cutout and said second half-circular cutout define a circular cutout when said first portion is attached to said second position.
11. The automated freezer as recited in claim 10 wherein said platform has a platform diameter and said circular cutout has a cutout diameter, and said cutout diameter is greater than said platform diameter.
12. The automated freezer as recited in claim 10 wherein said cartridge includes a bottom edge having an opening with an opening dimension, and said platform includes a platform diameter, and said opening dimension is greater than said platform diameter.
13. The automated freezer as recited in claim 2 wherein said retention mechanism comprises a plurality of arms moveable between a first position and a second position, and said plurality of arms enter said inner passage when in said first position and said plurality of arms do not enter said inner passage when in said second position.

Serial No. 10/725,954
60246-296

14. The automated freezer as recited in claim 13 further including a resilient member that biases said plurality of arms into said first position.
15. The automated freezer as recited in claim 13 wherein said plurality of arms comprise four arms.
16. The automated freezer as recited in claim 13 wherein said first position is substantially perpendicular to said second position.
17. The automated freezer as recited in claim 13 wherein said at least one item biases said plurality of arms into said second position.
18. A method for removing at least one item from an automated freezer, the method comprising the steps of:
- loading the at least one item into a cartridge;
 - loading the cartridge in the automated freezer;
 - sending a request to the automated freezer; and
 - automatically removing the at least one item from the automated freezer in response to said request.
19. The automated freezer as recited in claim 1 wherein said at least one item is transferred from the automated freezer to a grill for cooking said at least one item.
20. The automated freezer as recited in claim 1 further including a sensor that detects when said cartridge is empty and a visual indicator that indicates when said sensor detects that said cartridge is empty.

Serial No. 10/725,954
60246-296

EVIDENCE APPENDIX

None

Serial No. 10/725,954
60246-296

RELATED PROCEEDINGS APPENDIX

None

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